

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

**MCKENZIE-WILLAMETTE REGIONAL
MEDICAL CENTER ASSOCIATES, LLC, d/b/a
MCKENZIE-WILLAMETTE MEDICAL
CENTER**

and

**Case Nos.:19-CA-077096
19-CA-095797**

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 49, CTW-CLC**

ORDER DENYING PETITION TO REVOKE SUBPOENA B-712405

Counsel for Acting General Counsel served the Custodians of Records of Respondent McKenzie-Willamette Medical Center with subpoena duces tecum B-712405 dated February 22, 2013, (subpoena) requesting six categories of documents with multiple subparts which Acting General Counsel demands from the Respondent's records custodian produce at the outset of the hearing scheduled to commence on March 12, 2013 in Eugene, Oregon. The described documents include grievances, personnel files, and documents related to Respondent's proposed changes to health insurance in connection with several requests for information from the Charging Party Union to Respondent.

On March 4, 2013, Respondent filed a petition to revoke the subpoena (the "Petition"). In it, counsel for Respondent first claims that the Board lacks the authority to issue the subpoena as a result of the *Noel Canning v. NLRB* decision at the DC Circuit Court of Appeals. The remainder of Respondent's petition contains conclusory objections to the subpoena, information equally available to Acting General Counsel, unduly burdensome, vague and overbroad, and seeking confidential privileged records and/or attorney work product.

On March 7, 2013, Acting General Counsel filed his opposition to the Petition (Opposition) addressing all of Respondent's general objections to the subpoena. On March 7, 2013, this matter was referred to me for ruling by the Regional Director in Region 19.

First of all I deny the Petition as to Respondent's argument that the Board lacks authority to issue the subpoena. Section 102.31(a) of the Board's Rules and Regulations states that "[t]he Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof." Here, Chairman Pearce issued the subpoena, in accordance with this Rule.

To the extent that the Respondent is arguing that the Board lacks a quorum to rule on the Petition to Revoke, I also reject this argument. I recognize that the United States Court of Appeals for the District of Columbia Circuit has found that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, _ F.3d _ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *United States v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

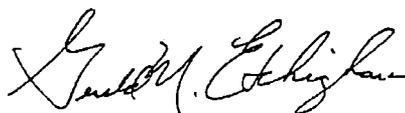
In addition, I deny the Petition on the grounds that Respondent's boilerplate general objections are non-specific and do not provide a specifically clear explanation of the legal and factual basis for each category of requested documents. Respondent's Petition shows that no meet and confer has occurred between counsel at the large expense to the parties and this adjudicative body. Here, in place of a specific narrow pleading that addresses possible minor problems with this subpoena that in most cases are easily resolved between the parties through a simple meet and confer conference done in good faith, this pleading, objects to all six requests in the subpoena without stating that it has or will attempt to make a diligent search and reasonable inquiry to produce any portion of the requested documents or any statement that it is willing to produce the documents on the designated date or state a reason the party is unable to comply. Consequently I find that all of Respondent's objections to the subpoena are frivolous and conclusory.

As to the specific objections of categories 1-6 the Acting General Counsel's arguments are incorporated by reference with requests 1-6 of the subpoena.

For the reasons stated above, I have concluded that Respondent failed to meet the minimum burden to provide grounds for revocation of the subpoena at issue here. Accordingly, Respondent is directed to produce the subpoenaed documents at the hearing or otherwise make them reasonably available in advance of the hearing for review and copying by the Acting General Counsel "at such times and place, and under such circumstances as will cause the least possible annoyance or interruption to [Respondent's] business." See *G.H.R. Energy Corp.*, 707 F.2d 114, quoting from *Jackson Packing Co. v. NLRB*, 204 F.2d 842, 844 (5th Cir. 1953).

IT IS ORDERED that Respondent's petition to revoke B-712405 is **DENIED** in its entirety.

Dated: March 11, 2013



Gerald M. Etchingam
Associate Chief Administrative Law Judge

Served by facsimile upon the following:

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NLRB-SAN FRANCISCO

JOB #387

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	3/11	10:26	912062206305	EC--S	00' 33"	C004	OK
002		10:28	918604309437	EC--S	01' 05"	C004	OK
003		10:29	915038945022	G3--S	01' 11"	C004	OK

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